

## **REMARKS/ARGUMENTS**

Claims 1-8, 11-28, 31-41 and 44-49 are pending in the present application. Reconsideration of the claims is respectfully requested.

### **I. Interview**

Applicants thank the Examiner for the courtesies extended during the interview that was held on October 11, 2006.

### **II. 35 U.S.C. § 103, Obviousness**

The Examiner rejected claims 1-8, 12-28, 32-41, and 44-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0016759 published by *Macready* in view of U.S. Patent 6,401,080 issued to *Johnson*, and U.S. Patent 6,338,050 issued to *Conklin*. This rejection is respectfully traversed.

The Examiner relies on U.S. Patent 6,401,080 issued to *Johnson* in his rejection. Applicants respectfully point out that U.S. Patent 6,401,080 is issued to *Bigus et al.* In the Notice of References cited that was included in the Office Action mailed February 27, 2006, the Examiner cited U.S. Patent 6,047,274 issued to *Johnson*. Throughout the Examiner's detailed rejection, the Examiner discusses *Johnson*, without referring to a patent number. The Examiner also states that *Johnson* teaches a "moderator". While U.S. Patent 6,401,080 issued to *Bigus et al.* does not teach a moderator, U.S. Patent 6,047,274 issued to *Johnson* does teach a moderator; therefore, Applicants believe the Examiner is relying on U.S. Patent 6,047,274 issued to *Johnson*. Applicants' remarks below are directed toward U.S. Patent 6,047,274 issued to *Johnson*.

Applicants' independent claims recite similar features. Claim 1 is representative of the independent claims. Claim 1 recites automatically negotiating, by a negotiating engine in the computer system, with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service; and the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

The Examiner relies on *Johnson* to teach automatically negotiating, by a negotiating engine in the computer system, with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service; and *Conklin* to teach the negotiating engine automatically negotiates by

determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

The Final Office Action, page 3, line 3, through page 4, line 14, states:

Macready does not explicitly disclose automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the one or more rules, and the one or more attributes of the product or service, and receiving a modification, which was made by the customer, to the terms of sale, and the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. However, Johnson discloses automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the one or more rules, and the one or more attributes of the product or service [C1 L44-L58; C4 L66-L67; c6 L17-L22, L57-L64; C14 LAO-L25 - see moderator = automatic negotiator] to obtain wholesale price with best economic value by automatic auction system. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Macready and include automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service, as disclosed by Johnson, to provide an electronic auction system with negotiation engine to obtain best price for the product. Conklin discloses receiving a modification, which was made by the customer, to the terms of sale, and negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer 1. Until the customer and the negotiating engine agree to mutually acceptable terms of sale [Abstract; col. 12 lines 28-45; col. 14 lines 1-40; col. 19 lines 28-37 and claim 211 to provide a system and method for iterative bargaining and purchasing over a network which enabled the buyer to negotiate the terms and conditions iteratively until the sale agreement is reached. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Macready and Johnson and include receiving a modification, which was made by the customer, to the terms of sale, and negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale, as disclosed by Conklin, to provide negotiation system to enable the seller to submit counteroffer to buyer until the sale is concluded.

Final Office Action, dated August 11, 2006, pages 3-4.

Thus, the Examiner relies on *Johnson* to teach a negotiating engine that automatically negotiates and *Conklin* to teach the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer. Applicants do not agree that the cited references teach the features as asserted by the Examiner.

*Johnson* does not teach a negotiating engine that automatically negotiates. The moderator of *Johnson* administers a bidding service. It does not participate in an auction. It does not negotiate

anything. It merely facilitates the transmission of bids and a selection of a bid. The moderator receives bids from the providers. The moderator then notifies various providers about what the other providers have bid. The providers then have an opportunity to adjust their bids. Thus, “through this auction, Providers will be apprised of the bids of competing Providers and have an opportunity to modify their bids accordingly.” *Johnson*, column 6, lines 16-19. The moderator of *Johnson* is not a negotiating engine that automatically negotiates because it does not negotiate anything.

In addition, the providers and end users do not negotiate with each other. The providers do not negotiate with anyone when modifying their bids. They merely see other providers’ bids and then determine what to bid in order to make their bid more competitive in comparison.

The providers transmit their bids to the moderator. The moderator then transmits the bids to the providers so that providers are aware of what their competitors have bid. After being apprised of what their competitors have bid, the providers can then lower or raise their own bid.

The moderator also transmits the bids to the end users. These end users are the customers. After being apprised of what the providers have bid, each end user customer then selects the provider that will provide electrical power or natural gas to the end user. There is no negotiation that takes place. The end user merely selects one of the bids it has been offered. The end user does not negotiate with anyone.

Neither the moderator nor the providers and end users negotiate. Therefore, *Johnson* does not teach a negotiating engine that negotiates.

The Examiner relies on *Conklin* to teach the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale. Applicants disagree that *Conklin* teaches these features because *Conklin* does not teach a negotiating engine that negotiates.

*Conklin* teaches a multivariate negotiations engine 212. A seller and a buyer can negotiate transactions through the multivariate negotiations engine 212. The multivariate negotiations engine 212, itself, does not negotiate; it merely provides services through which the buyer and seller can negotiate.

The abstract clearly describes the buyer and seller being the entities that negotiate.

A multivariate negotiations engine for international transaction processing which: enables a sponsor to create and administer a community between participants such as buyers and sellers having similar interests; allows a buyer/participant to search and evaluate seller information, propose and negotiate orders and counteroffers that include all desired terms, request sample quantities, and track activity; allows a seller/participant to use remote authoring templates to create a complete Website for immediate integration and activation in the community, to evaluate proposed buyer orders and counteroffers, and to negotiate multiple variables such as prices, terms, conditions etc., iteratively with a buyer. The system provides secure databases, search engines, and other tools for use by the sponsor, which enable the sponsor to define the terms of community participation,

establish standards, help promote the visibility of participating companies, monitor activity, collect fees, and promote successes. All this is done through a multivariate negotiations engine system operated at the system provider's Internet site, thus requiring no additional software at the sponsors', or participant sellers', or buyer's sites. This also allows buyers and sellers to use and negotiate payment options and methods that are accepted internationally. The system maintains internal databases that contain the history of all transactions in each community, so that sponsors, buyers and sellers may retrieve appropriate records to document each stage of interaction and negotiation. Documents are created by the system during the negotiation process.

[Emphasis added]

*Conklin*, Abstract.

According to *Conklin*, an initializing event occurs, such as a first participant proposing terms of a transaction to a second participant through the multivariate negotiations engine 212. See *Conklin*, column 23, lines 38-46. The multivariate negotiations engine 212 recognizes that the first and second participants are negotiators and also determines that one of the participants is a deciding entity. The second participant evaluates the proposed terms, and then either accepts or rejects them. If the second participant accepts them, closure is reached and the multivariate negotiations engine 212 stores the agreed upon terms. If the second participant rejects the terms, the first participant then proposes terms again. The multivariate negotiations engine 212 does not perform a negotiation between the first and second participants. The actual negotiation is done by the buyer and seller. Once the buyer and seller complete their negotiation, the multivariate negotiations engine 212 merely stores the terms and may create a concluding document.

*Conklin* provides, in column 24, line 59, through column 25, line 33, another example of how multivariate negotiations engine 212 works.

With reference now to FIG. 1e, the steps of multivariate negotiations engine 212 are shown. While a sponsor 06, is desirable, multivariate negotiations engine 212 can operate with only a deciding entity DE and another initiating entity OE. If this is a commerce community, deciding entity DE is usually the seller and the other initiating entity OE is usually the buyer. However, even in this situation, other designations are possible. For example, if the buyer is sending out a request for proposal to which sellers must reply and negotiate, then the buyer may be the deciding entity and the seller(s) the other negotiating entity. For many master agreements or open to buy agreements, both negotiating parties may be deciding negotiating entities.

In any case, as described in more detail below, one of the entities initiates a negotiation process and the participants negotiate terms iteratively, back and forth through multivariate negotiations engine 212 until the deciding entity accepts and closure 240 is reached. In a commercial community, closure 240 usually results in a contract document 242 and probably some state changes 244 associated with activating production, shipments, payments, order handling and so on.

To operate, multivariate negotiations engine 212 shown in FIG. 1e, need involve only two entities, one with decision-making authority and one to propose different or additional terms, with the goal of their actions being closure on a final set of terms. Multivariate negotiations engine 212 can also help participants check out market conditions through inquiries and proposals where closure 240 may not result in any contract document 242 but only in an accurate assessment of market conditions. For example, when there is rumored to be a shortage of goods of a certain type, a buyer may want to know whether it can purchase such a product in high quantities at a reasonable price from any seller. If not, then the buyer may believe the shortage does, in fact, exist.

Returning now to FIG. 1e, it can be seen that as few as two participants can use the iterative multivariate negotiation features of the present invention. At least one must be designated or identified as the deciding entity DE. Both can propose terms back and forth (see FIG. 1i) until closure 240 is reached.

[Emphasis added]

*Conklin*, column 24, line 59, through column 25, line 33.

Thus, *Conklin* describes the multivariate negotiations engine 212 providing features through which participants negotiate a transaction. The participants negotiate until the participant that is the deciding party agrees to the terms. The multivariate negotiations engine 212, itself, does not negotiate. Therefore, *Conklin* does not teach a negotiating engine automatically negotiating by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

Because neither *Johnson* nor *Conklin* teaches a negotiating engine that negotiates, the combination of *Macready*, *Johnson*, and *Conklin* does not render Applicants' claims obvious. The combination does not teach or suggest automatically negotiating, by a negotiating engine in the computer system, with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service; and the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

The Examiner rejected claims 11 and 31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0016759 published by *Macready* in view of U.S. Patent 6,401,080 issued to *Johnson*, and U.S. Patent 6,338,050 issued to *Conklin*, and further in view of U.S. Patent 6,647,374 issued to *Kansal*. This rejection is respectfully traversed.

Claims 11 and 31 describe the history information including at least one of production costs for the product or service, prices of similar or competing products or services, current or past sales and income

on different products or services, estimates of historical measures of customer demand for the product or service, and customer click stream history.

Neither *Macready, Johnson, Conklin*, nor *Kansal* teaches a negotiating engine that negotiates. Therefore, the combination of *Macready, Johnson, Conklin*, and *Kansal* does not teach automatically negotiating, by a negotiating engine in the computer system, with the customer terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service; and the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale in combination with the history information including at least one of production costs for the product or service, prices of similar or competing products or services, current or past sales and income on different products or services, estimates of historical measures of customer demand for the product or service, and customer click stream history. Therefore, the combination of *Macready, Johnson, Conklin*, and *Kansal* does not render claims 11 and 31 obvious.

### **III. Conclusion**

It is respectfully urged that the subject application is patentable over the cited prior art and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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